

HUMAN SERVICES DEPARTMENT[441]

Notice of Intended Action

Proposing rule making related to child support and providing an opportunity for public comment

The Department of Human Services hereby proposes to amend Chapter 95, “Collections,” and Chapter 99, “Support Establishment and Adjustment Services,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 217.6.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapters 252B and 252H.

Purpose and Summary

These proposed amendments conform rule 441—95.14(252B) to the federal regulations, effective January 19, 2017, of the Department of Health and Human Services, Administration for Children and Families. Specifically, these proposed amendments conform to 45 CFR 303.11, Case Closure Criteria. The Child Support Recovery Unit (CSRU) has implemented many of the federal regulations in administrative rules over the years. The revised federal regulations update language in some of those rules and add new permissive case closure reasons.

These proposed amendments also update Chapter 99, Divisions IV and V, by removing references to voluntary reduction of income as a factor when CSRU modifies child support obligations.

In 2013, the Iowa Supreme Court revised Chapter 9, “Child Support Guidelines,” of the Iowa Court Rules to require a written determination to impute income. Iowa Court Rule 9.11(4) allows the court to make a written finding of voluntary unemployment or underemployment and to impute income to a party if the court finds that a substantial injustice would occur to use actual earnings. When CSRU uses income based on a party’s voluntary reduction of income in administrative actions, essentially CSRU includes imputed income in the child support calculations without the required written findings by the court. Iowa Court Rule 9.11(4) does not give CSRU authority to impute income when a party is voluntarily unemployed or underemployed. Only the court has that authority.

The current CSRU practice of not using the actual income of those who are voluntarily unemployed or underemployed does not take into account that a party’s unemployment or underemployment may be for justifiable reasons that have nothing to do with an attempt to reduce the child support obligation. In addition, federal regulations released in December 2016 (specifically 45 CFR 302.56 and accompanying comments found at 81 Fed. Reg. 93492) include guidance for states on using the actual income of parties, which does not appear to align with the existing CSRU voluntary reduction in income rules.

Fiscal Impact

These amendments will not substantially change the number of actions CSRU completes. There are no system changes needed to implement the changes, and CSRU will not need to increase or decrease staff to complete the actions.

Jobs Impact

After analysis and review of this rule making, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to rule 441—1.8(17A,217).

Public Comment

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Department no later than 4:30 p.m. on February 20, 2018. Comments should be directed to:

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Public Hearing

No public hearing is scheduled at this time. An oral presentation regarding this rule making may be demanded by 25 interested persons, a governmental subdivision, an agency, or an association of 25 or more persons as provided in Iowa Code section 17A.4(1)“b.”

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its regular monthly meeting or at a special meeting. The Committee’s meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making actions are proposed:

ITEM 1. Rescind rule 441—95.14(252B) and adopt the following **new** rule in lieu thereof:

441—95.14(252B) Termination of services.

95.14(1) Case closure criteria.

a. The child support recovery unit may terminate services when the case meets at least one of the following case closure criteria and the child support recovery unit maintains supporting documentation for the case closure decision in the record:

(1) There is no ongoing support obligation, and arrearages are under \$500 or unenforceable under state law.

(2) The noncustodial parent or alleged father is deceased, and no further action, including a levy against the estate, can be taken.

(3) The noncustodial parent is living with the minor child as the primary caregiver, the custodial parent is deceased, and there is no assignment to the state of support or of arrearages that accrued under the support order.

(4) The child support recovery unit cannot establish paternity because:

1. The child is at least 18 years old and the statute of limitations bars an action to establish paternity;

2. A genetic test or a court or administrative process has excluded the alleged father and no other alleged father can be identified;

3. The child support recovery unit has determined that it would not be in the best interest of the child to establish paternity in a case that involves incest or rape or a case in which legal proceedings for adoption are pending; or

4. The identity of the biological father is unknown and cannot be identified after diligent efforts, including at least one interview by the child support recovery unit with the recipient of services.

(5) The noncustodial parent's location is unknown and the child support recovery unit has made diligent efforts to locate the noncustodial parent using multiple sources, in accordance with regulations in 45 CFR 303.3, all of which have been unsuccessful, within the applicable time frame:

1. Over a three-year period when there is sufficient information to initiate an automated locate effort.

2. Over a one-year period when there is not sufficient information to initiate an automated locate effort.

(6) The child support recovery unit has determined that, throughout the duration of the child's minority (or after the child has reached the age of majority), the noncustodial parent cannot pay support and shows no evidence of support potential because the parent has been institutionalized in a psychiatric facility, is incarcerated, or has a medically verified total and permanent disability. The child support recovery unit must also determine that the noncustodial parent has no income or assets available above the subsistence level that could be levied or attached for support.

(7) The noncustodial parent's sole income is from supplemental security income (SSI) payments.

(8) The noncustodial parent is a citizen of and lives in a foreign country, does not work for the federal government or a company with headquarters or offices in the United States, and has no reachable domestic income or assets, and there is no federal or state treaty or reciprocity with the country.

(9) In a case involving child support services to a person who is not a recipient of public assistance, the child support recovery unit has provided location-only services.

(10) The child support recovery unit has received a written or verbal request from the recipient of services to close the case, and there is no assignment to the state of support or of arrearages that accrued under the support order.

(11) In a case involving child support services to a recipient of public assistance, there has been a finding of good cause or other exception in a public assistance case as specified in 441—subrules 41.22(8) through 41.22(12) and 441—subrule 75.14(3), including a determination that support enforcement may not proceed without risk or harm to the child or caretaker relative.

(12) In a case involving child support services to a person who is not a recipient of public assistance or who is a recipient of public assistance receiving Medicaid only, the child support recovery unit has received information that the address in the unit's record is no longer current and the unit is unable to contact or otherwise locate the recipient within 60 days following receipt of this information, despite a good-faith effort to contact the recipient through at least two different methods.

(13) In a case involving child support services to a person who is not a recipient of public assistance or who is a recipient of public assistance receiving Medicaid only, the recipient of services has failed to cooperate with the child support recovery unit, which documented the circumstances of the noncooperation, and an action by the recipient of services is essential for the next step in providing services. (See rule 441—95.19(252B).)

(14) The child support recovery unit documents failure by the initiating agency, as defined under 45 CFR 301.1, to take an action that is essential for the next step in providing services.

(15) The initiating agency, as defined under 45 CFR 301.1, has notified the child support recovery unit that the initiating agency has closed its case.

(16) The initiating agency, as defined under 45 CFR 301.1, has notified the child support recovery unit that its intergovernmental services are no longer needed.

(17) Another assistance program, including IV-A, IV-E, SNAP, and Medicaid, has referred to the child support recovery unit a case for which it is inappropriate to establish, enforce, or continue to enforce a child support order and the custodial or noncustodial parent has not applied for child support services.

(18) The case meets any other basis for case closure based upon federal law.

b. The child support recovery unit may terminate services when no support or arrearages that accrued under the support order are assigned to the state and the recipient of services requested the child support recovery unit to close the case to allow the tribal IV-D agency to start providing services under that program.

c. The child support recovery unit must close a case and maintain supporting documentation for the case closure decision when the following criteria have been met:

(1) The child support recovery unit is notified that the child is eligible for health care services from the Indian Health Service (IHS); and

1. The IV-D case was opened because of a Medicaid referral based solely upon health care services, including the Purchased/Referred Care program, provided through an Indian health program (as defined at 25 U.S.C. 1603(12)); and

2. The recipient of services requested the child support recovery unit to close the case.

(2) The child support recovery unit receives instructions for case closure from an initiating agency, as defined under 45 CFR 301.1. Within ten working days, the child support recovery unit must stop the income withholding order or notice and close the intergovernmental IV-D case.

95.14(2) Case closure notifications. In cases meeting one of the criteria of 95.14(1), except 95.14(1) “a”(9), (10), or (11), the child support recovery unit shall send notification of its intent to close the case to the recipient of services or the initiating agency, as defined under 45 CFR 301.1, in writing 60 calendar days before case closure. The notice shall be sent to the recipient of services or the state requesting services at the last-known address stating the reason for denying or terminating services, the effective date, and an explanation of the right to request a hearing according to 441—Chapter 7. Closure of the case following notification is subject to the following:

a. If, in response to the notice, the recipient of services or the initiating agency, as defined under 45 CFR 301.1, supplies information which could lead to the establishment of paternity or a support order or enforcement of an order, the case shall be kept open.

b. If the case is to be closed because the child support recovery unit was unable to contact the recipient of services as provided in subparagraph 95.14(1) “a”(12), the case shall be kept open if contact is reestablished with the recipient of services before the effective date of the closure.

c. The recipient of services may request to have the child support recovery unit reopen the case at a later date if there is a change in circumstances which could lead to the establishment of paternity or a support order or enforcement of an order by completing a new application and paying any applicable fee.

d. For notices under this subrule, if the recipient of services specifically authorizes consent for electronic notifications, the child support recovery unit may elect to notify the recipient of services electronically of the child support recovery unit’s intent to close the case. The child support recovery unit must maintain documentation of the recipient’s consent in the case record.

This rule is intended to implement Iowa Code sections 252B.4, 252B.5, and 252B.6.

ITEM 2. Amend subrule 99.65(1) as follows:

99.65(1) Conducting the review. The child support recovery unit or its attorney shall review the case for administrative adjustment of a child support obligation unless it is determined that any of the following exist:

a. The location of one or both of the parents is unknown.

b. The variation from the Iowa Supreme Court mandatory child support guidelines is based on any material misrepresentation of fact concerning any financial information submitted to the child support recovery unit.

~~c. The variation from the Iowa Supreme Court mandatory child support guidelines is due to a voluntary reduction in net monthly income attributable to the actions of the parent. The unit may request and the parent shall supply verification that a loss of employment was not voluntary or that all facts concerning financial information are true. Verification may include, but is not limited to, a statement from the employer, a doctor, or other person with knowledge of the situation.~~

~~d. c.~~ The criteria of rule 441—99.62(252B,252H) are not met.
~~e. d.~~ The end date of the order is less than 12 months in the future or the youngest child is 17½ years of age.

ITEM 3. Rescind rule 441—99.87(252H) and adopt the following **new** rule in lieu thereof:

441—99.87(252H) Misrepresentation of fact.

99.87(1) The unit shall not modify the support order based on a substantial change of circumstances if a change in income is due to any material misrepresentation of fact concerning any financial information submitted to the child support recovery unit.

99.87(2) The unit may request verification that all facts concerning financial information are true. Verification may include, but is not limited to, a statement from the employer, a doctor, or other person with knowledge of the situation.

ITEM 4. Amend subrule 99.91(5) as follows:

99.91(5) *Change of circumstances.* The request is based on a substantial change in circumstances and:

a. to d. No change.

~~*e.* The change in income is a voluntary reduction attributable to the actions of the party, as explained in rule 441—99.87(252H), or~~

~~*f. e.* The change in income is due to material misrepresentation of fact, as explained in rule 441—99.87(252H).~~